

§ 17.04

17 CFR Ch. I (4–1–07 Edition)

Rules 17.00 and 17.01 must be submitted by futures commission merchants, clearing members and foreign brokers provided that such persons are unable to meet the requirements set forth in §§ 17.01(g) and 17.02.

(c) Pursuant to § 17.01(f), the authority to determine whether to permit an authorized representative of a firm filing the Form 102 to use a means of authenticating the report other than by signing the Form 102 and, if so, to determine the alternative means of authentication that shall be used.

(d) Pursuant to § 17.00(a), the authority to approve a format and coding structure other than that set forth in § 17.00(g).

[62 FR 24034, May 2, 1997, as amended at 67 FR 62352, Oct. 7, 2002; 69 FR 76400, Dec. 21, 2004; 71 FR 37820, July 3, 2006]

§ 17.04 Reporting omnibus accounts to the carrying futures commission merchant or foreign broker.

(a) Any futures commission merchant, clearing member or foreign broker who establishes an omnibus account with another futures commission merchant or foreign broker shall report to that futures commission merchant or foreign broker the total open long positions and the total open short positions in each future of a commodity and, for commodity options transactions, the total open long put options, the total open short put options, the total open long call options, and the total open short call options for each commodity options expiration date and each strike price in such account at the close of trading each day. The information required by this section shall be reported in sufficient time to enable the futures commission merchant or foreign broker with whom the omnibus account is established to comply with part 17 of these regulations and reporting requirements established by the reporting markets.

(b) In determining open long and open short futures positions, and open purchased long and open granted short option positions, in an omnibus account for purposes of complying with §§ 17.00(f), 1.37(b) and 1.58 of this chapter, a futures commission merchant, clearing member or foreign broker shall total the open long positions of

all traders and the open short positions of all traders in each future of a commodity and, for commodity options transactions, shall total the open long put options, the open short put options, the open long call options, and the open short call options of all traders for each commodity option expiration date and each strike price. The futures commission merchant, clearing member or foreign broker shall, if both open long and short positions in the same future or option are carried for the same trader, compute open long or open short positions as instructed in this paragraph.

(1) Include both the total open long and the total open short positions of the trader if:

(i) The positions represent transactions on a reporting market which requires long and short positions in the same future or option held in accounts for the same trader to be recorded and reported on a gross basis; or

(ii) The account is an omnibus account of another futures commission merchant or foreign broker; or

(2) Include only the net long or net short positions of the trader if the positions represent transactions on a reporting market which does not require long and short positions in the same future or option held in accounts for the same trader to be recorded and reported on a gross basis.

(Approved by the Office of Management and Budget under control number 3038-0009)

[46 FR 63036, Dec. 30, 1981, and 47 FR 21028, May 17, 1982, as amended at 62 FR 24034, May 2, 1997; 69 FR 76400, Dec. 21, 2004; 71 FR 37820, July 3, 2006]

PART 18—REPORTS BY TRADERS

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AUTHORITY: 7 U.S.C. 2, 4, 6a, 6c, 6f, 6g, 6i, 6k, 6m, 6n, 12a and 19; 5 U.S.C. 552 and 552(b), unless otherwise noted.

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§ 18.00 Information to be furnished by traders.

Every trader who owns, holds or controls, or has held, owned or controlled, a reportable futures or options position in a commodity shall within one business day after a special call upon such trader by the Commission or its designee file reports to the Commission concerning transactions and positions in such futures or options. Reports shall be filed for the period of time that the trader held or controlled a reportable position and shall be prepared and submitted as instructed in the call. The report shall show for each day covered by the report the following information, as specified in the call, separately for each future or option and for each reporting market:

- (a) Open contracts;
- (b) Purchases and sales;
- (c) Delivery notices issued and stopped;
- (d) Purchases and sales of futures for commodities or for derivatives positions; and
- (e) Options exercised.

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[69 FR 76400, Dec. 21, 2004, as amended at 71 FR 37821, July 3, 2006]

§ 18.01 Interest in or control of several accounts.

If any trader holds, has a financial interest in or controls positions in more than one account, whether carried with the same or with different futures commission merchants or foreign brokers, all such positions and accounts shall be considered as a single account for the purpose of determining whether such trader has a reportable position and, unless instructed otherwise in the special call to report under § 18.00 of this part, for the purpose of reporting.

[64 FR 24046, May 5, 1999]

§ 18.02 [Reserved]

§ 18.03 Delegation of authority to the Director of the Division of Market and Oversight.

The Commission hereby delegates, until the Commission orders otherwise, the authority to make special calls on

traders for information as set forth in §§ 18.00, 18.04 and 18.05 to the Director of the Division of Market Oversight to be exercised by the Director or by such other employee or employees of the Director as may be designated from time to time by the Director. The Director of the Division of Market Oversight may submit to the Commission for its consideration any matter which has been delegated in this paragraph. Nothing in this paragraph prohibits the Commission, at its election, from exercising the authority delegated in this paragraph.

[62 FR 6114, Feb. 11, 1997, as amended at 67 FR 62352, Oct. 7, 2002]

§ 18.04 Statement of reporting trader.

Every trader who holds or controls a reportable futures and option position shall after a special call upon such trader by the Commission or its designee file with the Commission a "Statement of Reporting Trader" on the Form 40 at such time and place as directed in the call. All traders shall complete part A of the Form 40 and, in addition, shall complete:

Part B—If the trader is an individual, a partnership or a joint tenant.

Part C—If the trader is a corporation or type of trader other than an individual, partnership, or joint tenant.

(a) Information to be furnished by all traders in part A of the Form 40 shall include:

(1) Name and address of reporting trader.

(2) Principal business and occupation of the reporting trader and, in addition, whether transactions are made for, on behalf of, or in association with, a customer trading program of a futures commission merchant, a commodity pool, a producer cooperative, any business activities in which the trader is commercially engaged, or for personal use.

(3) Type of trader.

(4) Registration status with the Commission, if any.

(5) The name and address of each person whose option or futures trading is controlled by the reporting trader. Provided that if the reporting trader is a customer trading program, or the commodity trading advisor thereof, that is

a managed or guided account program in which ten or more persons participate, the information furnished may be limited to the name of any commodity pool which participates in the program and the name and address of the CPO.

(6) The name, address and business phone of each person who controls the trading of the reporting trader.

(7) The names and locations of all futures commission merchants, introducing brokers, and foreign brokers through whom accounts owned or controlled by the reporting trader are carried or introduced at the time of filing a Form 40, if such accounts are carried through more than one futures commission merchant or foreign broker or carried through more than one office of the same futures commission merchant or foreign broker, or introduced by more than one introducing broker clearing accounts through the same futures commission merchant, and the name of the reporting trader's account executive at each firm or office of the firm.

(8) The names and locations (city and state) of persons who guarantee the futures or option trading accounts of the reporting trader or who have a financial interest of 10 percent or more in the reporting trader or the accounts of the reporting trader.

(9) The following information concerning other option or futures trading accounts which the reporting trader guarantees or other futures or option traders or accounts in which the reporting trader has a financial interest of 10 percent or more:

(i) The names of traders for whom the reporting trader guarantees accounts or in which the reporting trader has a financial interest;

(ii) The names of the accounts that the reporting trader guarantees or in which the reporting trader has a financial interest; and

(iii) The names and locations of the brokerage firms at which the accounts are carried.

(10) Information concerning ownership or control by a foreign government, agent of a foreign government entity specially acknowledged by a statute or regulation of a foreign jurisdiction or entity financed by a foreign government either through ownership

of capital assets or provision of operating expenses.

(11) Signature of the trader and date of signing the report. If the reporting trader is an organization, the signature must be that of a partner, officer or trustee authorized to sign on behalf of that organization.

(b) Information to be furnished in part B of the Form 40 shall include:

(1) Business telephone number of the reporting trader.

(2) Employer and job title if the reporting trader is an individual.

(3) The following information if a trader makes transactions or holds positions in a futures or option contract where such transactions or positions normally represent a substitute for transactions to be made or positions to be taken at a later time in a physical marketing channel, and the transactions or positions are economically appropriate to the reduction of risks in the conduct and management of a commercial enterprise:

(i) Commercial activity associated with use of the option or futures market (*e.g.*, production, merchandising or processing of a cash commodity, asset/liability risk management by depository institutions, security portfolio risk management, etc.)

(ii) Physical commodities underlying use of the futures or option markets.

(iii) Futures or option markets used.

(4) The name, address, and type of any organization in which the reporting trader participates in the management if such organization holds another futures or option trading account.

(5) If the reporting trader is a partnership or joint tenant, the name and address of each partner (excluding limited partners in commodity pools) or joint tenant and the name of the partner or joint tenant who ordinarily places orders.

(c) Information to be furnished in part C of the Form 40 shall include:

(1) Whether or not the reporting trader is organized under the laws of any state (including the District of Columbia) or territory or possession of the United States or under the laws of any foreign jurisdiction. Reporting traders organized outside the jurisdiction of

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the United States must indicate the country of origin.

(2) The names of parent firms and whether or not they are organized under the laws of any state (including the District of Columbia) or territory of possession of the United States and the location of each headquarter's office.

(3) Names and locations of all subsidiary firms that trade in commodity futures or options and whether or not the subsidiary firms are organized under the law of any state (including the District of Columbia) or territory of possession of the United States.

(4) Name, address, and business telephone number of person(s) actually controlling the trading and, if different persons are responsible for different commodities or options, the commodities or options for which each controller has responsibility.

(5) Name, office address and business telephone number of person or persons to contact regarding trading.

(6) The following information if a trader makes transactions or holds positions in a futures or option contract where such transactions or positions normally represent a substitute for transactions to be made or positions to be taken at a later time in a physical marketing channel and the transactions or positions are economically appropriate to the reduction of risks in the conduct and management of a commercial enterprise:

(i) Commercial activity associated with use of the option or futures market (*e.g.*, production, merchandising or processing of a cash commodity, asset/liability risk management by depository institutions, security portfolio risk management, etc.)

(ii) Physical commodities underlying use of the futures or option markets.

(iii) Futures or option markets used.

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[43 FR 60149, Dec. 26, 1978, as amended at 46 FR 59967, Dec. 8, 1981; 46 FR 63036, Dec. 30, 1981; 47 FR 57015, Dec. 22, 1982; 48 FR 35300, Aug. 3, 1983; 48 FR 52703, Nov. 22, 1983; 51 FR 4720, Feb. 7, 1986; 58 FR 33330, June 17, 1993; 62 FR 6114, Feb. 11, 1997; 62 FR 13301, Mar. 20, 1997]

§ 18.05 Maintenance of books and records.

Every trader who holds or controls a reportable futures or option position shall keep books and records showing all details concerning all positions and transactions for future delivery in the commodity on all reporting markets, all positions and transactions in the commodity option, and all positions and transactions in the cash commodity, its products and byproducts and, in addition, commercial activities that the trader hedges in the commodity underlying the futures contract in which the trader is reportable, and shall upon request furnish to the Commission any pertinent information concerning such positions, transactions or activities.

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[71 FR 37821, July 3, 2006]

§ 18.06 [Reserved]

PART 19—REPORTS BY PERSONS HOLDING BONA FIDE HEDGE POSITIONS PURSUANT TO § 1.3(z) OF THIS CHAPTER AND BY MERCHANTS AND DEALERS IN COTTON

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19.00 General provisions.

19.01 Reports on stocks and fixed price purchases and sales pertaining to futures positions in wheat, corn, oats, soybeans, soybean oil, soybean meal or cotton.

19.02 Reports pertaining to cotton call purchases and sales.

19.03-19.10 [Reserved]

AUTHORITY: 7 U.S.C. 6g(a), 6i, and 12a(5), unless otherwise noted.

SOURCE: 43 FR 45828, Oct. 4, 1978; 46 FR 63036, Dec. 30, 1981, unless otherwise noted.

§ 19.00 General provisions.

(a) *Who must file series '04 reports.* The following persons are required to file series '04 reports:

(1) All persons holding or controlling futures and option positions that are reportable pursuant to § 15.00(1)(2) of this chapter and any part of which constitute bona fide hedging positions as defined in § 1.3(z) of this chapter;